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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 CARRIE ROBINSON, on Behalf of Herself
12 and All Others Similarly Situated,

13 Plaintiff,

14 vs.

15 NCO FINANCIAL SYSTEMS, INC. and
16 DOES 1 through 25, inclusive,

17 Defendants.
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Case No. C 05-04006 CW (MEJ)

ORDER GRANTING STIPULATION RE:
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND CLASS
NOTICE

I. INTRODUCTION

Plaintiff Carrie Robinson, by and through her counsel of record, and Defendant NCO Financial Systems, Inc. (“NCO”), by and through its counsel, hereby submit this Stipulation and [Proposed] Order Re: Preliminary Approval of Class Action Settlement and Class Notice. An order amending certain provisions of the Settlement Agreement is necessary, as the parties learned last week that notice to members of the class was not accomplished as previously believed. As outlined herein and with the Court’s approval, the parties have agreed and stipulated to amending certain provisions of the Settlement Agreement to ensure prompt and adequate notice will be made to the class members. These changes are necessary so the proposed settlement can move forward to final approval and without any ultimate prejudice to the class members.

Given that the Notices and the Claim Forms were not mailed on September 11, 2006 as believed, the October 27, 2006 deadline for class members to exclude themselves from the class and/or object to the settlement must be reset from October 27, 2006 and the December 8, 2006 fairness hearing must be continued. The parties also propose modifying the Settlement Agreement to change the third-party vendor responsible for printing and mailing the Notices and Claim Forms.

II. PREAMBLE

WHEREAS, on July 13, 2006, the parties submitted the Joint Motion for Preliminary Approval of Class Action Settlement. [Docket 48]

WHEREAS, ¶8 of the Class Action Settlement Agreement, provides that the parties agreed NCO would be responsible for the printing and mailing of the Notice of Class Action and Proposed Settlement (“Notice”) and the Claim Form. *See* Class Action Settlement Agreement, ¶ 8, attached to the Joint Motion for Preliminary Approval at Exhibit 1.

WHEREAS, ¶2 of the Settlement Agreements states there are 12,424 class members. *Id.* This information was provided by NCO which it believed to be accurate at the time.

WHEREAS, on August 9, 2006, the Court entered the Order re: Preliminary Approval of Class Action Settlement (“August 9 Order”) which, among other things, provided for approval of the

1 proposed form of Notice of Class Action and Proposed Settlement and the Claim Form. [Docket #
2 56]

3 WHEREAS, the August 9 Order also set: (1) the date for mailing the notice and claim form
4 at 10 days from the date of the Order; (2) the date for the class members to exclude themselves from
5 or object to the settlement as October 10, 2006; and (3) the fairness hearing on December 8, 2006.

6 WHEREAS, on August 11, 2006, NCO requested an amendment to the August 9 Order to
7 correct a typographical error in the preliminary approval order to provide the agreed 21-day time
8 period for PSC to mail class members the notice and claim form. [Docket #s 57-59]

9 WHEREAS, on August 28, 2006, the Court issued an order approving NCO's requested
10 amendment. [Docket # 76] That order also continued from October 10 to October 27, 2006 as the
11 deadline for exclusions and objections to the settlement.

12 WHEREAS, on September 22, 2006, NCO obtained confirmation from its printing and
13 mailing vendor, PSC, that the Notices and Claim Forms had been mailed to the class members on
14 September 11, 2006. As of October 13, 2006, however, the Claims Administrator for this case had
15 received only a total of five Claim Forms and no class members had contacted Class Counsel.

16 WHEREAS, NCO investigated the class mailing and determined on October 19, 2006, that
17 an error was made by its vendor, PSC, responsible for printing and mailing to class members the
18 Notices and Claim Forms. The failure of the process in this instance resulted from a mistake – the
19 PSC representative chose and confirmed a proper mailing of the *wrong* data set. As a result of this
20 error, the Notices and Claim Forms were not mailed to *any* of the class members. Instead, PSC
21 mailed the Notices and Claim Forms to only 91 individuals unrelated to the present case.

22 WHEREAS, during this process, NCO also learned that the number of class members,
23 previously believed to be 12,424, was actually 12,113. The discrepancy arose because 310 of the
24 accounts had a Chase P.O. Box in place of the consumers' addresses. Consequently, the collection
25 notices at issue were never sent to these consumers and, by definition, they are not members of the
26 class. Additionally, the spreadsheet in which the database of accounts was maintained numbered one
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row which did not contain account information, thus the further reduction by one for a total of 12,113.

WHEREAS, immediately upon learning of the mailing error, Plaintiff's Counsel, Elizabeth Arleo, and NCO's counsel, Debbie Kirkpatrick, jointly called the Court clerk to inform the Court of the mailing error and that the parties intended to file this Stipulation and [Proposed] Order. Ms. Kirkpatrick subsequently filed a Declaration Regarding Error in Class Notice and Intention to Submit Joint Status Report and Recommendations. [Docket #71]

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, counsel for the parties in the above-entitled action, to:

- (1) Amend ¶8 of the Settlement Agreement by replacing the entire existing provision with the following language "At NCO's cost, the independent third-party claims administrator, First Class, Inc., will oversee the mailing of the Notices and Claim Forms, attempt to locate complete and correct addresses of class members, provide an acceptable affidavit of the mailing and obtain an affidavit from the U.S. Postal Service to demonstrate that the correct number of letters were mailed. First Class, Inc. will also conduct the mailing of the checks in compliance with the Claims Administrator, pursuant to ¶11 of the Settlement Agreement.";
- (2) Amend ¶2 of the Settlement Agreement by changing "12,424 class members" to "12,113 class members";
- (3) Amend ¶6.D. and ¶12.B.i. of the Settlement Agreement to add "revised" before "¶8";
- (4) Wherever the "opt out/exclusion date" is referenced in the Settlement Agreement, it shall be interpreted to mean any amended opt out/exclusion pursuant to the [Proposed] Order contained herein;
- (5) Wherever the language "Court's entry of the Order of Preliminary Approval of Class Settlement" is referenced in the Settlement Agreement, it shall now be interpreted to include any subsequent order regarding preliminary approval of the class action settlement;

(6) NCO will pay the maximum class disbursement of \$50 to each of the five individuals unrelated to this action who returned Claim Forms which they erroneously received;

(7) Request that the Court continue the time for class members to object to or exclude themselves from the settlement; and

(8) Request that the Court continue the fairness hearing from December 8, 2006.

DATED: November 2, 2006

Respectfully submitted,

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Attorneys for Defendant,
NCO Financial Systems, Inc.

* * *

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED,

Within 14 days of the date of this Order, First Class, Inc. shall cause a copy of the Notice and Claim form to be mailed to all members of the Settlement Class;

The deadline for class members to exclude themselves from the class and/or object to the settlement is continued from October 27, 2006 to **January 3, 2007**, approximately 60 days from the date of this Order; and

The Fairness Hearing shall be continued from December 8, 2006 to **February 9, 2007 at 10:00 a.m.**

Date: 11/3/06



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE